(50)

HIGH COURT OF CHHATTISGARH, BILASPUR

Division Bench: **Hon'ble Shri Jagdish Bhalla, Ag. C.J. &**
Hon'ble Shri Justice Sunil Kumar Sinha, J.

M.A.(C) No. 954 of 2007

THE NEW INDIA ASSURANCE CO. LTD.

Versus

GEETABAI & OTHERS

ORDER

Order for consideration

Sd/-
Judge
20.08.2007

Hon'ble Shri Jagdish Bhalla, Ag. C.J.

Sd/-
Ag. Chief Justice

Post for Order: 22.08.2007

Sd/-
Sunil Kumar Sinha
Judge

(51)

HIGH COURT OF CHHATTISGARH, BILASPUR

M.A.(C) No. 954 of 2007

APPELLANT THE NEW INDIA ASSURANCE CO. LTD., MADINA BUILDING, KUTCHERY CHOWK, RAIPUR (C.G.)

Versus

RESPONDENT

1 GEETABAI D/O MANIKRAM SAHU AGE ABOUT 39 YRS.,

2 MANIK RAM SAHU S/O LATE SHOBHA RAM SAHU AGE ABOUT 55 YRS.,

RESPONDENTS NO.- 1 & 2, RESIDENT FOR VILLAGE BANCHARODA, POST-CHHATERA, THANA ARANG, DISTT. RAIPUR (C.G.)

3 TEJRAM ALIAS MANTRAM S/O GOKUL SAHU AGE ABOUT 30 YEARS, RESIDENT FOR BARBASPUR (BIRKONI), THANA – MAHASAMUND, DISTT.-MAHASAMUND (C.G.)

4 DEMAN KUMAR S/O PREMLAL CHANDRAKAR, RESIDENT OF VILLAGE CHHATONA (FARFOD), THANA ARANG, DISTT. RAIPUR (C.G.)

(APPEAL UNDER SECTION 173 OF THE MOTOR VEHICLES ACT, 1988)

Appearance:

Shri Sudhir Agrawal, counsel for the appellant.

DIVISION BENCH: HON'BLE SHRI JAGDISH BHALLA, Ag. C.J & HON'BLE SHRI SUNIL KUMAR SINHA, J.

ORDER
(.08.2007)

Following Order of the Court was delivered by

Sunil Kumar Sinha, J,

(1) Being aggrieved with the award dated 30.4.2007 passed by the 3rd Additional Motor Accident Claims Tribunal, Raipur in Claim Case No. 22/2006, the Insurance Company has preferred this appeal.

(2) The brief facts are that on 26.4.2006, the deceased-Parmanand Sahu, aged about 20 years, was working as a conductor in Mini Bus No. C.G. 04 ZA/0322. Respondent No. 3 was the driver and respondent No.4 was the registered owner of the said vehicle. As usual, when the Bus was going towards Raipur, on the way, with an intention to stop the Bus, the driver all of sudden applied heavy break, due to which, the deceased, who was standing near the door, fell down from the Bus and received many injuries. He was taken to Ambedkar Hospital, Raipur, where he died on 2.5.2006 during the course of his treatment.

(3) In claim petition, the claimant- respondent No.1, who is mother of the deceased, pleaded that when the deceased was aged about 6 months, she had taken divorce from her husband namely- Gopal Sahu and was residing with her father, respondent No.2 and they were the only dependents of the deceased. They pleaded the income of the deceased to be Rs.200/- per day and in addition to the ground of the loss of earning, on many other grounds, they claimed a total sum of Rs.12,50,000/-.

(4) The aforesaid claim was resisted by the owner and the driver as also the Insurance Company. The owner took a plea that, in fact, the deceased himself was negligent and was responsible for the said accident. As far as income is concerned, the owner contended that the deceased was getting Rs.70/- per

day as salary and Rs.50/- was also given to him as allowances and in this manner, he was earning Rs.120/- per day. The Insurance Company, after obtaining permission under Section 170 of the Motor Vehicles Act, completely denied the claim filed by respondents No. 1 & 2. It also took the statutory defence of breach of policy on account of validity of permit and driving license of the driver.

(5) Learned Claims Tribunal framed various issues in this case and after taking evidence of the parties, recorded a finding that the deceased fell down from the Bus on account of rash and negligent driving of the driver. It held that the deceased was earning Rs.120/- per day and he must be working for 24 days in a month, on account of which, his monthly income was assessed to be Rs.2,880/-. After deducting 1/3rd towards the personal expenses of the deceased, the Tribunal assessed the dependency to the tune of Rs.1,920/- per month and after applying the multiplier of 13, it assessed the amount of compensation towards the loss of earning in sum of Rs.2,99,520/-. Apart from this, on account of mental agony Rs.5,000/- and funeral expenses Rs.2,000/- was awarded and ultimately an award of Rs.3,06,520/- along with interest @ 6% per annum from the date of application was passed in favour of the claimants/respondents No. 1 & 2.

(6) Learned counsel for the appellant argued that it has not been established that the death was caused due to rash and

negligent driving of the offending vehicle. He submitted that on appreciation of evidence, it would appear that in fact, the deceased himself was negligent.

(7) We have carefully considered this point. The Tribunal has recorded the finding of rash and negligent driving on the basis of evidence of an eye witness namely- Vijay Kumar Nishad, who was examined as AW-2. He has stated that on the fateful day, he was a passenger in the offending Bus. The deceased, who was the conductor, was standing near the gate of the Bus and as some animals came in front of the Bus on the road, the driver applied break to the vehicle, which was running on the speed of 60-70 k.m. per hours, due to which the conductor fell down from the Bus. He along with the driver, brought the conductor to Medical College, Raipur. The Tribunal has duly appreciated this evidence and after such appreciation, it has recorded a finding that in fact, the accident occurred due to rash and negligent driving of the offending vehicle by the driver. We find that the finding recorded by the Tribunal is based on positive evidence and the same cannot be held to be erroneous and unsustainable.

(8) It is a settled principle that in such cases, the Tribunal is required in law to give its finding on probabilities and not on proving the offence beyond reasonable doubt as is done by a criminal court.

(9) Having heard learned counsel for the appellant, having perused the records of the Misc. Appeal, particularly the copy of evidence of eye witness, we find that there is no force in the arguments advanced by the learned counsel for the appellant. The Tribunal has rightly recorded the finding on rash and negligent driving of the offending vehicle.

(10) No other point was raised before us.

(11) There is no substance in the appeal, the same is liable to be dismissed and is accordingly dismissed.

Sd/-
Ag. Chief Justice

Sd/-
Sunil Kumar Sinha
Judge

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